

February 3, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —

JOHN CORNYN
Attorney General

— * —

P.O. Box 12548
Austin, Texas
78711-2548
(512) 463-2100
www.oag.state.tx.us

Ms. Eugenia A. Cano
City Attorney
216 W. Sealy
Alvin, Texas 77511

OR99-0314

Dear Ms. Cano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121621.

The City of Alvin (the "city") received a request for a copy of the "Alvin P.D. file re: investigation of death of Katherine Renee Goode - entire file - Date of Incident 1/22 or 1/23, 1994." You inform us that following discussions with the requestor, the requestor narrowed his request to certain categories of documents in the investigation file. You state that the city is providing the requestor with all requested documents except those submitted to this office for review. You contend that the submitted documents are excepted from disclosure pursuant to section 552.101 of the Government Code.

You did not seek an open records decision from this office within the statutory ten business day deadline. *See* Gov't Code § 552.301. Your delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 generally constitutes a compelling reason.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas*

Indus. Accident Bd., 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

The submitted documents include the payroll and bank records of Michael Shane Goode and an affidavit from Mr. Goode's employer regarding his payroll records. These personal financial records are generally considered highly intimate and embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). In this case, there does not appear to be a legitimate public interest in these financial records, nor does any party suggest that the public has a legitimate interest in these records. Therefore, we conclude that the city must withhold Mr. Goode's payroll and bank records and the affidavit from disclosure under section 552.101 in conjunction with the common-law right to privacy.

The submitted documents also include a written transcript of a taped conversation. You argue that the transcript is protected by the common-law right to privacy. The transcript includes speculation about how Katherine Renee Goode might have died. Although some of the information in the transcript is personal in nature, we find that there is a legitimate public interest in the transcript. Thus, the transcript is not protected by the common-law right to privacy, and the city must release it.

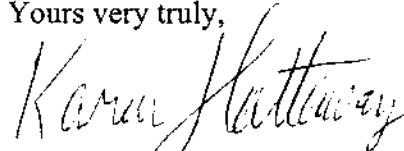
It appears that you have released the incident and offense reports relating to the death of Katherine Renee Goode. However, you contend that some of the remaining documents from the police department's investigation file constitute a criminal history of Mr. Goode. You contend that releasing these documents would implicate Mr. Goode's privacy interest. We agree. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). We have recognized this privacy interest in numerous decisions. *See, e.g.*, Open Records Decision Nos. 616 (1993), 565 (1990). Therefore, the city must withhold the documents that constitute Mr. Goode's criminal history from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.

Finally, you contend that Mr. Goode's tax records are excepted from disclosure under section 552.101. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information

confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Thus, the city must withhold Mr. Goode's tax records from disclosure under section 552.101 as information deemed confidential by federal statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 121621

Enclosures: Submitted documents

cc: Mr. Michael Engelhart
3040 Post Oak Blvd, Suite 450
Houston, Texas 77056
(w/o enclosures)